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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 200

TRAYTON L. LATHROP,

Appellant,

vs.

JOSEPH D. DONOHUE,

Appellee.

MOTION OF APPELLEE TO DISMISS APPEAL AND BRIEF

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MOTION OF APPELLEE TO DISMISS APPEAL AND BRIEF

MOTION OF APPELLEE TO DISMISS APPEAL

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves to dismiss the appeal from the final judgment of the Supreme Court of Wisconsin in the above action, *Lathrop v. Donohue*, 10 Wis. 2d 230, 102 N. W. 2d 404, on the following grounds:

1. The appeal is not within the jurisdiction of this Court, because not taken in conformity to statute.

2. The appeal does not present a substantial federal question.

THE QUESTION PRESENTED

The question raised by appellant is whether the orders of the Wisconsin Supreme Court integrating the state bar under its inherent supervisory authority over the legal profession violate any of appellant's rights under the Fourteenth Amendment.

STATEMENT OF THE CASE

This is a direct appeal from the final judgment of the Wisconsin Supreme Court entered on April 5, 1960, holding that the orders of that court integrating the bar of the state are constitutional, and affirming the judgment of the circuit court entered on October 23, 1959, which dismissed appellant's complaint.

In 1956, upon petition of members of the bar and after a hearing, the Wisconsin Supreme Court decided to integrate the bar for a trial period of two years, under its inherent authority over attorneys as officers of the court. *In re Integration of the Bar*, 273 Wis. 281, 77 N. W. 2d 602. In accordance with that decision and after a further hearing, the court entered an order on December 7, 1956, (273 Wis. p. vii, with an accompanying opinion at 273 Wis. p. viii, 79 N. W. 2d 441) promulgating rules and by-laws for the State Bar of Wisconsin (R. 17A-28).

Briefly, they require enrollment in the State Bar and the payment of annual dues by every attorney licensed or admitted to practice law. If the annual dues of a member are not paid, the board of governors may suspend him and during suspension he may not practice law. Provision is made for officers who are elected by the members, and for 29 members of the board of governors elected by the lawyers in 9 districts of the state. Provision is also made for meetings of the board, meetings of the members, referendum procedure, standing committees and sections. The machinery for handling grievance complaints is set up, but the power to suspend or disbar attorneys remains with the Supreme Court.

Appellant in his jurisdictional statement gives the impression by use of the word "substantially" that the services and activities of the State Bar are the same as the prior voluntary bar. In fact, he states that the only difference between the functions before and after the integration order of December 7, 1956 is compulsory membership and compulsory dues. (Jur. Statement, 9).

The court below took pains to point out some of the differences, particularly in the appendix to its opinion entitled "Major Activities of State Bar of Wisconsin" (R. 74-9). Two main areas of difference mentioned by the court are in the fields of unauthorized practice (R. 76) and grievance investigations (R. 78). It is obvious, too, that with greater financial resources from compulsory dues the State Bar is able to undertake and accomplish work which the old bar could never do.

At the end of the two-year trial period of integration a further hearing was held by the Wisconsin Supreme Court. It found that integration had proved successful and that none of the fears of objectors had materialized, and on December 22, 1958 ordered it continued on a permanent basis. *In re Integration of the Bar*, 5 Wis. 2d 618, 621, 93 N. W. 2d 601, 602-3.

Appellant enrolled in the State Bar and paid his annual dues of $15.00 in 1957 and 1958 (R. 12). The following year, however, he paid his dues under protest (R. 15), and on June 8, 1959 started an action in the circuit court to recover them from the appellee, the treasurer of the State Bar (R. 7-17). The appellee (defendant) demurred to the complaint upon three grounds, namely, (1) that the circuit court lacked jurisdiction over the subject matter of the

action, (2) that there was a defect of parties defendant in that the State Bar was a necessary party, and (3) that the complaint did not state a cause of action in any event (R. 34). The circuit court sustained all three grounds of demurrer and dismissed the complaint (R. 39-51).

Appellant then appealed to the Wisconsin Supreme Court which affirmed the judgment of the circuit court. Although it agreed that the lower court did not have jurisdiction, the Supreme Court decided to treat the action as one that had been started originally and properly in that court (R. 62). It considered and resolved the constitutional issue as if the proceeding were originally brought in its court, but also ordered that the judgment of the circuit court be affirmed (R. 73). This may raise the question whether the judgment appealed from also rests on an adequate non-federal basis; but appellee would prefer to limit his motion to dismiss to the two grounds above stated and as to which argument follows.

SUMMARY OF ARGUMENT

A. This appeal is not permitted under 28 U. S. C. § 1257 (2) because the validity of a state statute is not involved. "Statute" means *legislative* action in some form. In this case we are dealing with *judicial* action in the form of orders of the Wisconsin Supreme Court integrating the bar under its inherent judicial power.

B. (1) The idea of the integrated bar comes to us from England and Canada where the profession has been organized for a long time and subject to much closer regula-

tion than in this country. In the past 39 years 27 states have integrated their bars, with marked success.

(2) The practice of law is subject to regulation within the bounds of due process and the equal protection of the laws. The integrated bar is a reasonable form of such regulation because it provides a democratic process by which lawyers can govern themselves and under which minorities are protected; because it is not a private association but a governmental agency created for a public purpose and always subject to the supervisory control of the court; and because it is only fair and equitable that *all*, and not just *some*, who practice should unite in a common effort to improve the services of the profession and share the cost thereof in the form of annual dues.

(3) The validity of the integrated bar under the federal Constitution has been upheld in every state where the question has been raised. There are many cases on the subject, both as to compulsory membership and annual dues, but there is no conflict among them.

(4) The question also seems to have been settled in this Court by *Railway Employes' Dept. v. Hanson*, 351 U. S. 225, where the Court upheld compulsory union membership and dues and said there was no more impairment of constitutional rights than in the case of the integrated bar.

(5) The legislative services of the State Bar are limited to matters directly relating to the courts, the administration of justice, and the practice of law. Its legislative work is non-partisan and non-political. The general public and the legislature are entitled to have the advice and views of the profession on proposed legislation in the above fields.

Other public agencies also engage in legislative activities, but no citizen can refuse to pay his taxes on that account.

(6) Appellant is deprived of no more freedom now than before the integrated bar. Every lawyer must become and remain a memb r of the bar, subject to regulation and discipline, whether the bar is organized or not. Appellant is not compelled to associate with anyone or to attend any meetings of the State Bar. He is free to vote in its elections or not, and is free to express his views on any subject. He is only compelled to pay his annual dues which are in the nature of a license fee for the regulation and improvement of his profession.

ARGUMENT

I. THIS APPEAL IS NOT WITHIN THE JURISDICTION OF THIS COURT, BECAUSE THE VALIDITY OF A STATE STATUTE IS NOT DRAWN IN QUESTION.

This appeal is taken under 28 U. S. C. § 1257 (2), which permits review of the final judgments of the highest court of a state as follows:

> "(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity."[1]

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1. Prior to the act of February 13, 1925, c. 229, 43 Stat. 936, 937, sec. 237 (a) of the Judicial Code provided for review on writ of error "where is drawn in question the validity of a statute of, or an authority exercised under, any state, on the ground of their being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of their validity." The act of February 13, 1925 struck out the words "or an authority exercised under" any state, leaving the language as in the present sec. 1257 (2).

However, the validity challenged by appellant is the validity of orders of the Wisconsin Supreme Court integrating the state bar under its inherent judicial power.

It is the review of a *statute* of a state which is authorized by § 1257 (2). The reference in that section to a state statute has a well-defined meaning under the cases. It signifies state legislative action in some form, but is not limited to laws passed by a legislature. *Williams v. Bruffy*, 96 U. S. 176, 183. Thus, the order of a state department or board may be a statute in the exercise of delegated legislative authority. *Bluefield Co. v. Pub. Serv. Comm.*, 262 U. S. 679, 683; *Lake Erie & W. R. R. Co. v. Pub. Util. Comm.*, 249 U. S. 422, 424. Municipal ordinances also fall within the same category. *King Mfg. Co. v. Augusta*, 277 U. S. 100, 102-14.

The test in these cases is whether the particular action proceeds from the legislative power of the state. It may emanate from delegated legislative authority, as in the case of state boards and municipalities, or from direct enactment by the legislature. *King Mfg. Co. v. Augusta, supra*, 103-4. Not every order of a state agency, of course, is a statute within the meaning of § 1257 (2). It must possess legislative characteristics and not be merely administrative in nature. See *Ex parte Williams*, 277 U. S. 267, 271-3.

In the present case, however, we are not dealing with *legislative* action of any kind or form. The orders complained of constitute *judicial* action by the Wisconsin Supreme Court in the exercise of its inherent authority over the practice of law. *In re Integration of Bar*, 273 Wis. 281, 283, 77 N. W. 2d 602, 603, (involving the first order of integration); *In re Integration of Bar*, 5 Wis. 2d 618, 622, 624-5,

93 N. W. 2d 601, 603, 604-5 (ordering integration continued on a permanent basis).

The issue whether integration was a matter for legislative or judicial action was raised squarely in *Integration of Bar Case,* 244 Wis. 8, 36-54, 11 N. W. 2d 604, 617-25. The 1943 legislature passed a statute providing for integration and for implementation by orders of the Wisconsin Supreme Court.[2] In a comprehensive opinion the court stated that the legislature had the power to impose minimum qualifications for attorneys in the exercise of the police power, but that the ultimate responsibility and authority with respect to the bar rested with the judicial department. The power to integrate the bar, it held, was a judicial and not a legislative function, and the statute was merely a legislative declaration that bar integration would promote the general welfare. In spite of such declaration by the legislature, the court declined to proceed with integration on its own order because so many attorneys were then in the military service. 244 Wis. 8, 54-5, 11 N. W. 2d 604, 624-5.

Appellant claims that such judicial action, in the form of the orders of the court integrating the bar, constitutes a statute of the state within the meaning of § 1257 (2). However, the only cases cited by him involve legislative action.[3] He refers to *King Mfg. Co. v. Augusta,* 277 U. S. 100, but this dealt with delegated legislative authority exercised in the form of municipal ordinances. There was a vigorous dissenting opinion by Justices Brandeis and Holmes (p. 115), protesting against stretching the words "statute of any state" to cover municipal ordinances, particularly after

2. The act, c. 315, Laws of 1943, became sec. 256.31, Wis. Stats.

3. Appellant's Jur. Statement, 3.

the amendment of 1925 which struck from the jurisdictional statute the words "or an authority exercised under" any state.[4]

The appellant would have this court go a long step beyond the above cases and hold that the integration orders of the Wisconsin court are state *statutes*. True, they have the effect of law, but that may be said generally of all judicial action. A similar contention has been made with respect to the provision in Article I, § 10, of the United States Constitution that "No state shall . . . pass any . . . law impairing the obligation of contracts. . . ." It has been argued that this relates to judicial as well as legislative acts. However, it is well-settled that the prohibition is directed only against impairment by legislation and not by judgments of courts. *Tidal Oil Co. v. Flanagan*, 263 U. S. 444, 451; *Barrows v. Jackson*, 346 U. S. 249, 260.

Accordingly, it would appear quite plain that an appeal does not lie under § 1257 (2). This Court may, of course, consider the appeal papers as a petition for certiorari under § 2103; but whether appeal or certiorari, it is submitted that a substantial federal question is not presented.

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4. "I cannot believe that if Congress had intended to maintain our jurisdiction to review judgments sustaining such ordinances on writ of error, it would not have found clearer language in which to express its purpose," said Mr. Justice Brandeis, at p. 116. Justices Brandeis and Holmes also dissented in **Sultan Ry. Co. v. Dept. of Labor**, 277 U. S. 135, 137, where the order of a state bureau was held to be a state statute.

II. THE QUESTION IS NOT SUBSTANTIAL.

The question presented is basically whether the Supreme Court of Wisconsin can order integration and require every lawyer to be a member of and pay dues to the State Bar, as a legitimate exercise of the court's inherent power to supervise and regulate the practice of law. As will be demonstrated in the discussion below, all the authorities are so clear and settled on the question that there is no reason why this Court should entertain an appeal or grant certiorari.

A. *Anglo-American Origins and Development of the Integrated Bar.*

The organized or integrated bar is an outgrowth of the historic power to regulate the legal profession as officers of the court, in order to prevent abuses, maintain high standards, and improve the administration of justice.

Although Herbert Harley of the American Judicature Society was the early crusader for the organized bar in this country, the idea did not originate with him. It came, as did so many of our legal concepts and institutions, from England. Harley got his first glimpse of an integrated bar when he visited Toronto in the Canadian province of Ontario, and was so impressed that he determined to promote the idea in the United States.[5] The movement was also espoused by such leading legal figures as Charles Evans Hughes, Elihu Root, and John W. Davis.[6]

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5. Winters, **Integration of the Bar—You Can't Lose, 39 Jour. Am. Jud. Soc.** 110, 141 (1956).

6. Cohen, **The National Call for the Organization of an All Inclusive Bar,** 1 N. Y. L. Rev. 80, 82, 83, and continued at 135, 136 (1926).

Dean William Wicker of the Tennessee College of Law points out that "The English bar has been integrated for centuries and the bars in all of the provinces of Canada are integrated."[7] In England no person may be a member of the bar, practicing as a barrister, without becoming a member of one of the four Inns of Court.[8] Solicitors have an organization known as The Law Society. While membership in the Society is "voluntary," parliament has given it powers and duties with respect to the legal profession far beyond that of any integrated bar in this country.[9] Moreover, no solicitor may practice unless he is issued an annual license by the Society, for which a small fee is paid.[10] He also is compelled to contribute annually to the Society's "Compensation Fund," which is in the nature of a security fund for clients.[11]

The authority of the Inns of Court over the bar, delegated to them by the judiciary, include admission and discipline even to the extent of disbarring or suspending a member from practice.[12] The strictness with which barristers have been regulated in England from early days was discussed at length by Chief Judge Cardozo in *People ex rel. Karlin v. Culkin*, 248 N. Y. 465, 473, 162 N. E. 487, 490, where he noted that "The conduct of the barristers was

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7. Wicker, **Integrated Bars,** 21 Tenn. L. Rev. 708, 709 (1951). See, also, Wicker, **The Pros and Cons of an Integrated Bar,** 23 Tenn. L. Rev. 457, at 457 (1954); Winters, Bar Association Organization and Activities, 4-5 (1954); **Petition of Florida State Bar Ass'n.,** 40 So. 2d 903, 908; Winters, **Integration of the Bar—You Can't Lose,** supra note 5, at p. 141.

8. Lund, **The Legal Profession in England and Wales,** 35 Jour. Am. Jud. Soc. 134, 136 (1952). The author is the secretary of The Law Society of England.

9. Ibid, 138-42.

10. Ibid, 140.

11. Ibid, 141.

12. Ibid, 135-6.

regulated with minute particularity, even in matters so personal as the growth of their beards or the cut of their dress."[13]

The organized bar, in the form of the Inns, developed in England in the 17th and 18th centuries because it was felt by the judiciary that the Inns could maintain more effective control and discipline over the profession than the courts.[14] The idea of integration spread from England to Canada, but there the distinction between barrister and solicitor is disappearing. In Ontario The Law Society occupies a position similar to the English Inns of Court, and is the organization of all lawyers. The other provinces have similar societies.[15]

Accordingly, there was nothing new or radical about integration when the movement started in this country. It had been part and parcel of the English legal system for centuries; and today no lawyer in England would have the temerity to challenge the authority of the Inns or The Law Society to supervise and regulate his professional life. When integration found acceptance in the United States, however, it was in a form with less authority but more democracy than the organized bar of England.

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13. See, also, 4 Holdsworth's History of English Law, 264 (1924).

14. Ibid, Vol. 6, 443. Although the courts ordered that all attorneys must become members of an Inn, the Inns would not admit practicing attorneys or solicitors. This led to the development of a separate organization for them, which later became The Law Society.

15. Winters, Bar Association Organization and Activities, 4-5 (1954).

In 1921 North Dakota became the first state to have an integrated bar. Today there are organized bars in 27 states,[16] Puerto Rico, and the Virgin Islands. Integration in these states has been accomplished by (1) legislative action in the form of detailed statutes, or (2) legislative action authorizing the highest state court to integrate the bar, or (3) promulgation of rules by the Supreme Court by virtue of its inherent power to regulate the profession.

No state having an integrated bar has changed back permanently to a voluntary form of organization.[17] Time and experience are the tests of most undertakings. The success of the integrated bar where tried is attested by the comments of those in the best position to know—the Supreme Court judges of integrated states.[18] Without exception they bespeak the many improvements over the old voluntary bar.

B. *The Integrated Bar is a Reasonable and Democratic Method of Regulating the Legal Profession.*

Whether the practice of law is a right or privilege, it is subject to regulation within the bounds of due process and the equal protection of the laws. *Schware v. Board of Bar Examiners*, 353 U. S. 232, 239. It is usually called a

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16. Alabama, Alaska, Arizona, Arkansas, California, Florida, Idaho, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Arkansas has an integrated bar for disciplinary purposes only.

17. The Oklahoma legislature in 1939 repealed the State Bar Act. However, within a few months the Supreme Court integrated the bar under its inherent power.

18. **Supreme Court Justices Present Views on Bar Integration,** 25 Jour. Am. Jud. Soc., 91, 126, 159 (1941-42), setting forth letters from judges of states having integrated bars.

privilege because it is conditioned upon compliance with certain qualifications, standards, rules, and regulations laid down by the judiciary or the legislature. *In re Greer*, 52 Ariz. 385, 389, 81 P. 2d 96, 98; *Matter of Co-operative Law Co.*, 198 N. Y. 479, 483, 92 N. E. 15, 16; *State Bar Ass'n. v. Conn. Bank & Trust Co.*, 145 Conn. 222, 234, 140 A. 2d 863, 870. In *People ex rel. Karlin v. Culkin*, 248 N. Y. 465, 470, 162 N. E. 487, 489, Cardozo, C. J., said:

> "'Membership in the bar is a privilege burdened with conditions.' Matter of Rouss, supra, 221 N. Y. page 84, 116 N. E. 783. The appellant was received into that ancient fellowship for something more than private gain. He became an officer of the court, and, like the court itself, an instrument or agency to advance the ends of justice."

The question then becomes one of the constitutional reasonableness of the regulations imposed, and it is submitted there can be no question on that score with respect to the integrated bar.

In the first place, the integrated bar is not a *private* organization but a *public* agency. It is an arm or agency of the court established to promote the administration of justice. 114 A. L. R. 161, at 161. It was so held by the court below (R. 70). Thus, the appellant is not asked to join a private association but a governmental agency created for a public purpose and subject to the supervision of the Supreme Court.

Secondly, the Wisconsin lawyer in the organized bar enjoys far more freedom and democracy than any other licensee. Other professions are regulated by examining boards such as the boards of medical examiners, dental

examiners, pharmacy examiners, etc. In all instances the members of the profession have little or nothing to say about the functioning of such boards or appointments to them, which are made by the Governor. The integrated bar, on the other hand, operates under a democratic process whereby the members of the bar elect their officers and a board of governors, can initiate direct action in the assembly or by petition, and have the opportunity to participate in the work of the sections and committees. When it ordered integration to be made permanent, the Wisconsin court said:

> "These rules and by-laws constitute a democratic process by which members of the bar can govern themselves and can act in unison and by which minorities are protected; and they provide appropriate procedures for invoking the supervisory power of this court." *In re Integration of the Bar*, 5 Wis. 2d 618, 627, 93 N. W. 2d 601, 605.

Indeed, the integrated bar might much more appropriately be called "The Self-Governing Bar."

Although given the freedom and authority to govern itself, the organized bar cannot abuse its power because it is always subject to the supervisory control of the court. If it should embark on a program of improper policies or procedures, the court can and promptly would take remedial action. *In re Integration of the Bar*, 5 Wis. 2d 618, 624-5, 93 N. W. 2d 601, 604. Thus, there is a check and balance system to prevent arbitrary action or usurpation of power.

The integrated bar has been defined as "the process by which every member of the bar is given an opportunity to do his share in carrying out the public service of the bar,

and obliged to bear his portion of the responsibility." 114 A. L. R. 161, at 161. It is in the best traditions of fairness and equality to require all who are privileged to practice law and become a part of the judicial system to unite in a common effort to increase their own capabilities, maintain high standards for all, and improve their service to the public. It is likewise only reasonable that all—not just some—who have that privilege and responsibility, should bear their fair share of the costs.

With limited resources, interest, and participation, the old voluntary bar could not hope to undertake the services and achieve the goals of the organized bar. The differences in the two types of organization and the superiority and success of the integrated bar are discussed in the opinion of the court below and in *In re Integration of the Bar*, 5 Wis. 2d 618, 93 N. W. 2d 601.

Surely there can be no question that it offends neither due process nor the equal protection of the laws to require all members of the bar to act as a democratic, organized group in the discharge of their public responsibilities under the supervisory control of the courts, and to make contributions to such joint effort in the form of annual license fees.

C. *The Validity of the Integrated Bar Under the Federal Constitution Has Been Upheld in Every Case In Which the Question Has Been Raised.*

Appellant has combed the cases but has not been able to produce a single one holding that the integrated bar violates the United States Constitution.

He is well aware of the multitude of authorities in the states sustaining validity in general and compulsory membership and license fees in particular, whether integration is accomplished by statute or by court order. They are collected in 114 A. L. R. 161 and 151 A. L. R. 617.

They demonstrate that there is no conflict in the cases and that every time the integrated bar has been challenged on constitutional grounds, its validity has been upheld. Some of the more important cases are cited here:

Carpenter v. State Bar of California, 211 Cal. 358, 360, 295 P. 23, 24. (Imposition of annual dues sustained. "The validity of the State Bar Act as a regulatory measure under the police power has been repeatedly upheld by this court.")

Herron v. State Bar of California, 24 Cal. 2d 53, 64-5, 147 P. 2d 543, 549-50. (Constitutionality challenged and upheld.)

Petition of Florida State Bar Ass'n., 40 So. 2d 902, 906-7. (Integration by court under its inherent power upheld as a valid regulation of the bar, both as to requirement of membership and payment of dues.)

In re Mundy, 202 La. 41, 49-51, 11 So. 2d 398, 400-1. (Integration and annual dues upheld under the state's police power and under the court's inherent power to regulate the practice of law.)

Ayres v. Hadaway, 303 Mich. 589, 596-8, 6 N. W. 2d 905, 907-8. (The right to practice is not a property right but a privilege subject to regulation. Integration does not violate the due process clause of the Fourteenth Amendment.) To the same effect is *Emmons v. Smitt*, 58 F. Supp. 869, 873-7 (E. D. Mich. S. D.)

Petition for Integration of Bar of Minn., 216 Minn. 195, 200, 12 N. W. 2d 515, 518. (Integration by court order "would not in any respect violate the constitutional rights of any lawyer already admitted to practice.")

In re Integration of Nebraska State Bar Ass'n., 133 Neb. 283, 286-90, 275 N. W. 265, 266-8. (Comprehensive discussion of the right to integrate and regulate the bar under the court's inherent power.)

In re Scott, 53 Nev. 24, 39-40, 292 P. 291, 295. (Whether the practice of law is a privilege or property right, State Bar Act does not violate federal or state constitution.)

In re Platz, 60 Nev. 296, 302-9, 108 P. 2d 858, 862-4. (Constitutional objections to compulsory membership and dues considered and rejected.)

In re Gibson, 35 N. Mex. 550, 557-63, 4 P. 2d 643, 647-50. (Extensive discussion of validity of compulsory membership and dues with conclusion that there is no violation of the Fourteenth Amendment.)

Kelley v. State Bar of Oklahoma, 148 Okla. 282, 282-3, 298 P. 623, 624. (Whether or not the right to practice is a property right, integration is a constitutional form of regulation.)

Integration of the Bar Case, 244 Wis. 8, 44, 11 N. W. 2d 604, 620. (After extended discussion the court concluded

that integration "in no way violates the provisions of the Fourteenth Amendment.")

The unanimity of court decisions on the validity of bar integration, including compulsory membership and annual fees, led one writer to conclude: "It seems clear in the light of the decisions that all the objections heretofore raised as to the constitutionality of bar integration have now been settled. In every state in which questions as to the validity of these statutes have been raised, their constitutionality has been upheld."[19]

The only authority for the invalidity of any phase of bar integration is an Idaho case in which the bar statute was found to violate a *state* constitutional provision relating to the creation of corporations. *Jackson v. Gallet*, 39 Ida. 382, 228 P. 1068. However, the statute was amended to meet this difficulty, and the court subsequently held integration valid. *In re Edwards*, 45 Ida. 676, 266 P. 665.

The best appellant can do is to cite a few dissenting opinions.[20] That he cannot do more is not his fault, because there just is no conflict among the cases on the validity of integration under the federal Constitution.

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19. Wicker, **Integrated Bars,** 21 Tenn. L. Rev. 708, 712 (1951); and Wicker, **The Pros and Cons of an Integrated Bar,** 23 Tenn. L. Rev. 457, 459 (1954).

20. Appellant's Jur. Statement, 30-1.

D. *The Question Seems Settled In This Court.*

No integrated bar case has been before the United States Supreme Court. However, this Court has already passed upon the issue raised by appellant, compulsory membership and dues, in the field of labor organizations. In *Railway Employes' Dept. v. Hanson,* 351 U. S. 225, the Court upheld a railroad union shop agreement under the Railway Labor Act, requiring all employees to belong and pay dues to a union. It was argued that a union shop agreement forces men into ideological and political associations which violate their right to freedom of conscience, association, and thought. The Court found no infringement of constitutional rights, and referring to the integrated bar, it said (351 U. S. at 238):

> "On the present record, there is no more an infringement or impairment of First Amendment rights than there would be *in the case of a lawyer who by state law is required to be a member of an integrated bar.*" (Emphasis supplied)

In *DeMille v. American Federation of Radio Artists,* 77 A. C. A. 430, 175 P. 2d 851, affirmed 31 Cal. 2d 139, 187 P. 2d 769, the defendant union, consisting of radio entertainers and performers organized on a union shop basis, levied an assessment of $1.00 per member for the purpose of opposing a referendum on the question of a state right-to-work law. DeMille, a member of the union, objected to the assessment on the ground that it invaded his constitutional rights of suffrage, freedom of speech, press, and assembly. However, all the judges who considered the case in the trial court, the intermediate appellate court, and the California Supreme Court were of the opinion that there

was no impairment of constitutional rights. This Court denied certiorari, 333 U. S. 876.

If there is no constitutional question about the all-union labor organization, there should also be none about the all-lawyer bar organization. In the case of the integrated bar, there is the additional justification for compulsory membership and dues in the fact that the legal profession is entrusted with special responsibilities and is subject to close supervision and control as a calling affected with a public interest.

E. *The Legislative Activities of the State Bar Do Not Raise Any Question of Validity.*

Shorn of all the breast-beating about "freedom of association," appellant's argument seems to boil down to his objection to legislative activities on the part of the State Bar.

Actually, the legislative studies and work of the State Bar are a small part of its activities. Whatever legislative work it does is limited by the rules and by-laws promulgated by the Wisconsin Supreme Court. Sections 4 and 9, Art. IV, of the by-laws (R. 26-27) define the duties of two committees in the legislative field as follows:

> "*Section 4. Committee on administration of justice.* This committee shall study the organization and operation of the Wisconsin judicial system and shall recommend from time to time appropriate changes in practice and procedure for improving the efficiency thereof; and in that connection shall examine all legislative proposals for changes in the judicial system."

"*Section 9. Committee on legislation.* This committee shall study all proposals submitted to the Wisconsin Legislature or the Congress of the United States for changes in the statutes relating to the courts or the practice of law, and shall report thereon to the board of governors; and with the approval of the board of governors may represent the State Bar in supporting or opposing any such proposals."

The legislative work of the integrated bar, as defined by the Wisconsin court, is entirely non-partisan and non-political. It engages in no activities in support of party candidates or political programs, such as in the case of *International Association of Machinists v. Street*, No. 258, O. T. 1959, now pending before this Court.

The court below examined the activities of the State Bar in the field of legislation since the bar was integrated in 1956. It found in every instance that the measures advocated or opposed dealt only with the administration of justice, court reform, or legal practice (R. 66-7). It said:

"We are of the opinion that the public welfare will be promoted by securing and publicizing the composite judgment of the members of the bar of the state on measures directly affecting the administration of justice and the practice of law. The general public and the legislature are entitled to know how the profession as a whole stands on such type of proposed legislation. This is a function an integrated bar, which is as democratically governed and administered as the State Bar, can perform much more effectively than can a voluntary bar association." (R. 67)

If appellant is correct in his contention that his constitutional rights are invaded because he must support an

agency which takes positions on legislative matters, then the wheels of democratic government must come to a halt. A few illustrations will demonstrate the fallacy of his position.

One example, cited by the court below, is the state Judicial Council, supported by taxes which no taxpayer can escape. Among its functions is the duty to "recommend to the legislature any changes in the organization, jurisdiction, operation and methods of conducting the business of the courts which can be put into effect only by legislative action." § 251.181 (2) (f), Wis. Stats.

Another example is the state Legislative Council which functions in a much larger area. § 13.35, Wis. Stats. It operates with a permanent staff and various committees, studying problems in the different governmental fields and making recommendations for legislative or administrative action. Except for gifts or grants, it is supported by state tax monies.

Also, everyone knows that almost every state agency or department devotes time and effort to the study of matters before the legislature affecting it, prepares amendments or changes in the laws, appears before legislative committees, and talks to legislative representatives. This is also true of many federal departments. Often the bills are highly controversial and the views expressed by public agencies through their employees are hotly opposed by private citizens.

Yet in all these instances it would be unthinkable to say that the taxes which go in part to defray the expenses of such activities are invalid because some taxpayers may oppose the views expressed by public officials.

The court below also cited the recent case of *Dulles v. Johnson*, 273 F. 2d 362 (C. A. 2), in which bequests to certain New York bar associations were held to be deductible for federal estate tax purposes. The Court of Appeals discussed the legislative activities of the bar groups, which were similar in scope to those of the State Bar of Wisconsin, and found they did not constitute propaganda but were non-political and "scientific, educational and charitable" in nature (p. 367).

Like every other individual member of the State Bar, the appellant is free to express his own views at any time on legislative or other matters. He is free to disagree and state his disagreement whenever he chooses. However, the fact that he may oppose a position taken by the bar's board of governors should not alter the freedom of that board to take a position as the duly elected representatives of the lawyers of Wisconsin.

F. *There Is No Question of Freedom of Association.*

Appellant complains that he is deprived of his freedom of association by having to be a member of and pay dues to the State Bar of Wisconsin.

However, he was required to be a member of the bar before integration. Every practicing lawyer must be admitted to the bar and remain a member in good standing, regardless of whether the bar is integrated or not. He must be admitted and submit to regulation and supervision because he is an integral part of the judicial process and his is a special calling demanding the highest standards to protect the public interest.

Inasmuch as appellant is required to be and remain a member of the bar in order to practice law, what constitutional difference is there in the bar being organized or voluntary?

What freedom is impaired by making every lawyer pay his fair share of regulating and improving his profession, rather than to leave it to his personal volition so that some will bear the whole load and the others will escape?

As the court said below (R. 64-5), the rules and by-laws of the State Bar do not compel the appellant to associate with anyone. He is free to vote in elections or not. He is free to attend meetings or stay at home. He is free to disagree and voice his views on any subject, regardless of any position taken by the State Bar. The only compulsion or restriction on his freedom is that he pay annual fees of $15.00 a year.

Appellant has no answer to these propositions except to indulge in platitudes and rhetoric about First Amendment freedoms, or to set up straw men and knock them down. For example, on the matter of annual fees he exclaims that anyone "would vehemently assert that exaction of annual dues to support the Socialist, Republican or Democratic parties is a deprivation of his freedom of speech, assembly and petition." (Jur. Statement, 24.)

Appellant has cited First (and Fourteenth) Amendment freedom cases, such as freedom to speak at a public meeting (*Terminiello v. Chicago*, 337 U. S. 1), censorship of motion pictures (*Burstyn v. Wilson*, 343 U. S. 495), restrictions and censorship in connection with the distribution of circulars (*Schneider v. Irvington*, 308 U. S. 147), com-

pulsory disclosure of NAACP membership lists (*Bates v. City of Little Rock*, 361 U. S. 516), and segregation by city ordinance (*Buchanan v. Warley*, 245 U. S. 60); but none of these has even a remote similarity to the case of the integrated bar or the constitutional basis thereof.

He has closed his eyes to the unanimity of court decisions upholding the validity of integration and the payment of annual fees. He has refused to face or accept the fact that this Court has recognized fully the right of labor to organize all-union shops or associations and to compel every worker to join and pay dues, as to which the Court has said there is no more infringement of First Amendment rights than "in the case of a lawyer of a state who by state law is required to be a member of an integrated bar." *Railway Employes' Dept. v. Hanson*, 351 U. S. 225, 238.

Appellant's freedoms of association, speech, assembly, etc., are in no way violated by the integrated bar. His voice and actions are not restricted any more now than before the bar was organized. The privilege or right to practice law carries with it a correlative obligation. The profession has always been subject to control and supervision by the courts, because lawyers are so intimately connected and bound up with the judicial process.

Improvement of the bar and its services in the administration of justice is a necessary and worthy goal. Both the inherent authority and responsibility of the courts to regulate the profession and maintain high standards on the part of its members are well recognized. The Wisconsin Supreme Court has undertaken to integrate the bar as a reasonable and legitimate method of regulating the pro-

fession, and in a form which provides a democratic system of self-government.

This Court will be loathe, we are sure, to interfere with the exercise by the Wisconsin or any other state Supreme Court of its inherent and historic power with respect to the bar and to say that such action is arbitrary or capricious. It will be even more reluctant to do so in this instance, we believe, because appellant has been unable to demonstrate that the issue of the validity of integration is unsettled, or to cite any conflict in the many cases on the subject, or to show any difference in the integration orders of the Wisconsin Supreme Court which would violate his constitutional rights.

Accordingly, by none of the criteria of this Court has he raised any substantial question of constitutionality.

CONCLUSION

For the reasons stated, it is respectfully submitted that the appeal should be dismissed and certiorari denied.

Respectfully submitted,

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